expect there will be a saving of at least Rs. 2500 to 3000 a year. The new engine is a crude oil engine of 150 H. P.

Mr. T. S. Balarama Ayyar.— *(Trichur North)* I withdraw my motion.

Motion was, by leave, withdrawn.

Grant was put and carried.

Rs. 170 under 35—Income-tax—Office expenses.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*— I rise to move for an allotment of Rs. 170 under Income-tax-'Contigencies', for providing a telephone for the Income-tax Office. There was provision for this in 1111, but on account of delay in shifting the office from Trichur to Ernakulam, the amount lapsed.

Grant was put and carried.

The Cochin Criminal Procedure Code Amendment Bill.

✠ **Mr. Thomas Manjuran.**—*(Government Advocate and Law Officer).*—I rise to present the Select Committee's Report on the Cochin Criminal Procedure Code Amendment Bill and to move that the Bill as adopted by the Select Committee * be taken into consideration.

I do not propose to make any long statement, on the work done by the Select Committee. It is rather a very long Bill very carefully prepared and examined by the Select Committee during the sittings which extended for a long period and has undergone substantial changes. Generally speaking, it was almost accepted in toto. Excepting a few variations which they have alluded to in their report, most of the alterations were passed unanimously by the Select Committee. With regard to three important ones, there was a keen divergence between the Officials and non-officials. Now the Government agreed to this that although the amendments suggested by the Select Committee are not very important, the Government felt constrained, in view of their attempts to make Cochin Laws conform as far as possible with British Indian Laws, to suggest to move the amendments in this Council and to get even those suggestions modified so as to bring the bill in line with

✠ Speeches not corrected by the Hon'ble Member.

* Vide Appendix I.

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the original Bill. The Hon'ble Members will find that even with regard to these amendments of the Select Committee, Government have been considerably compelled to submit an amendment which I shall be presently moving.

Hon'ble Members will also notice that there are a good number of amendments numbering in all to 21, suggested by me. Now with regard to these amendments about 15 of them have to be introduced either as a result of certain clerical errors while drafting or due to some printing errors. Some are also due to certain later Amendments introduced in British India, later than 1923, when the Criminal Procedure Code was extensively amended. Our Bill which took a long time to prepare-it was prepared, I believe, 2 or 3 years ago—had to be brought up to date. In fact, some of these amendments have been suggested to make the provisions of the Bill in conformity with the British provisions. None of these 15 amendments introduce very important changes or divergence of practice. They are modifications in Br. India in order to meet certain situations. I shall just speak a word or two with regard to each amendment. To make a long story short, it comes to this. These amendments are suggested for bringing our Criminal Procedure Code to fall into exact line with the British Indian Criminal Procedure Code. There have been just a few variations to suit local conditions. As I have already said, it has been the definite policy of the Government, as explained by the Hon'ble the Diwan President in the House, to make laws conform as much as possible to British Indian Laws. It is to secure this object that these amendments are tabled. I move, Sir, that the Bill may now be taken up.

Mr. A. V. Moothedan *(Chalakkudi).*—On a point of order let me know whether these amendments were published in the Gazette, under S. O. 39?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—These amendments do not come under S. O. 39. I gave notice in time.

Mr. A. V. Moothedan *(Chalakkudi).*—All the Bills were published in the Gazette.

മിസ്റ്റർ വി. കെ. കുട്ടി.— സർ, ഇതു് രണ്ടാമതും ഒരു കമ്മറിക്ക അയയ്ക്കേണ്ടതാണ്. അങ്ങിനെ രണ്ടാമതും ഒരു കമ്മറിക്ക അയച്ചു റിപ്പോർട്ട് വരുത്തുകയാണ് വേണ്ടതു്.

മിസ്റ്റർ തോമസ്സ് മാത്തൂരാൻ.— അതിന്റെയൊന്നും ആവശ്യമില്ല. ഞാൻ എക്സ്പ്ലെയിൻ ചെയ്യുമ്പോൾ അതു മനസ്സിലാകും.

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There is nothing in these amendments. Most of them are for correcting clerical mistakes and printing errors.

Mr. A. V. Moothedan *(Chalakkudi).*—S. O. 29 reads thus : "When a Bill has been published under the preceding paragraph, a copy of the Bill and of the Statement of Objects and Reasons shall be sent to every member". Now when the original Bill was published, this amendment was not there.

Mr. President.—The Hon'ble Member is not yet aware under what power, the Law Member is moving this amendment. When a Bill is introduced in this House and has been referred to a Select Committee and the Select Committee reports, it is open to the Hon'ble Member to give notice of the amendments.

Mr. A. V. Moothedan *(Chalakkudi).*—We connot go into the amendments. It is for that purpose we appoint the Select Committee and the Select Committee, I think, had not looked into these amendments.

Mr. President.—Suppose these amendments stand in the name of the Hon'ble Member, what will he say?

Mr. A. V. Moothedan *(Chalakkudi.)*—I will say it should be republished.

Clauses 2 to 9 of the Bill were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

" Insert the following as sub-clause (1) of clause 10 of the Bill and re-number the rest :—

'(1) In section 73, sub-section (6), of the said Code, substitute " Order XXXIX " for " Chapter XXXV ".'

This amendment is necessitated for substituting the reference to the new Code instead of to the Old Code.

Amendment was put and carried.

Clause 10, as amended, was put and carried.

Clause 11 was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

" Delete from the Bill the first modification suggested by the Select Committee in its report ".

The first modification suggested by the Select Committee reads thus:

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'' Delete the full stop and double quotation occurring after the word 'Code' in clause (5) of section 88 of the Cochin Code of Criminal Procedure and introduce a comma after that word and add the following after the comma :—

'Provided that notwithstanding the provisions contained in section 172 of this Code, no prosecution shall be made under this section without the sanction of the Commissioner of Police'.

Now that is rather a new idea. I will explain in a word. Under the new Code, power has been given to compel witnesses to attend searches made by Police Officers. The lawyer-Members are very well aware that there is safeguard provided in the Criminal Procedure Code, to witness searches by two respectable persons. Hitherto there was no machinery to compel the persons to attend such searches. Now the New Criminal Procedure Code in British India introduced a very wholesome provision empowering Police Officers to compel witnesses, however respectable they may be, to attend searches whenever they are called upon to do so. Such a provision has been accepted by the Select Committee to be introduced. But the Select Committee thought that sanction provided in the British Act against refusal by respectable men to attend such searches should not be enforced here. The Hon'ble Members know that prosecutions for disobeying a requisition or order made by a public officer is to be supported either by a complaint made by the officer or by the sanction of the Government. Now in the case of Police searches, generally it will be the Police Inspectors that make these requisitions and the Committee thought that it will be rather unsafe in the interests of the public to give the Police Inspectors a chance of harassing respectable citizens. Hence the Committee thought that such action should be subject to the sanction of the Commissioner of Police. That constitutes substantial variation from the British Indian Act. The Government thought that there was no cause for such a modification. It is only a Court of Law that convicts. There will be remote chances of harassing citizens. Seeing that ultimately a punishment should be inflicted for the result of the prosecution depended upon the wording of the Court of Law, Government thought that there was no justification to make a substantial deviation. That is the reason why this amendment was introduced.

Mr. P. Raman Menon *(Mulakunnathukavu).*—We only want that the Police Commissioner should give sanction to the Police Inspector.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It is not laid down that it is for the 'Police Inspector' to send the requisition. It is 'an Officer conducting inspection'.

Mr. P. Raman Menon *(Mulakunnathukavu).*—Now the point is this. Whether the Commissioner should be given authority to accord the sanction or the Police Inspector. It is always reasonable and safe to have the power of giving the sanction vested in a superior officer. The Hon'ble Law Member says that only a Court will convict, and the person who gives the sanction does not matter. Yet we shall have to go to the Court several times before we are acquitted or discharged. That itself is very serious inconvenience and sufficient punishment. I think therefore that it would be better that the power is vested with the Commissioner.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—There is nothing to fear.

Mr. President.—But the subordinate officer will not issue an order without getting the permission from the superior officer.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— If defect is found the Commissioner can send a departmental circular not to issue orders without getting his previous sanction.

Mr. President.—Then why do you want a change from the suggestion of the Select Committee?

Mr. P. Raman Menon *(Mulakunnathukavu).*— Let us show some originality.

Mr. President.—The Hon'ble Members can take time land take up this clause afterwards.

The amendment was held over to be considered afterwards.

Clauses 13 to 18 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

"In clause 19, sub-clause (1), of the Bill omit the words "or the Chief Court" occurring in the new sub-section (3-A)"

This amendment became necessary on account of a mere slip in the original drafting of the Bill. There is a reference

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to the "Chief Court" in the original Bill which corresponds to a similar reference in the British Act i. e., 'British Indian High Court'. The reference became necessary with regard to the reference made from the order of the Presidency-Magistrate. Since we have no Presidency Magistrate here, such a reference is not necessary. As a result these words should be delected.

Amendment was put and carried.

Clause 19, as amended, was put and carried.

Clauses 20 to 24 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

"Insert the following as sub-clause (1) (i) of clause 25 of the Bill and re-number the existing sub-clause (1) as (1) (ii).

'(1) (i) in sub-section (1) insert the words "not being a Magistrate of the third class" after the words "any other Magistrate" and before the word "specially".'

I shall explain. Under the amended British Code, Third Class Magistrates have not been conferred with the powers to issue emergent orders under section 144 of the British Act corresponding to section 125 of our Code. Under the existing law, no magistrate may be empowered by Government to issue such orders. A restriction was introduced in British India that such Magistrates should be Magistrates of a grade not lower than the third-class Magistrates. Government thought that it was useful that we should conform to the British Indian Code in this respect. I request the House to accept this amendment.

Amendment was put and carried.

Clause 25, as amended, was put and carried.

Clauses 26 to 48 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

"In the second modification suggested by the Select Committee in its report, delete the following words occurring after '(aa)':—

'and the following should be introduced in the new proviso between the words 'public' and 'servant':—

'or municipal' ".

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The second modification suggested by the Select Committee is as follows:—

"The numbering of the new proviso should be converted into '(aa)' and the following should be introduced in the new proviso between the words 'public' and 'servant' .—

'or municipal' ".

Now the British Indian Code introduced a proviso to the effect that in the case of certain complaints made by Government servants, the complainants need not be examined on oath. So the British Indian Code dispensed with that formality. A similar provision was introduced in our Code also. During the discussion of the Select Committee, some Hon'ble Members pointed out that it would be useful to extend that privilege to Municipal Servants as well. Hon'ble Members know that a large number of prosecutions are ordered by the Municipality with regard to the payment of Municipal taxes, etc., and the Committee thought that it would be a useful suggestion. But the Government thought on consideration that it is not necessary and not after all very necessary. There is no difficulty for the Municipal Servants to be examined on oath. This recommendation of the Select Committee could not be accepted by the Government.

Mr. P. Raman Menon *(Mulakunnathukavu).*—The Chairman of the Ernakulam Municipal Council was one of the members of the Select Committee and he said from experience that it is necessary to extend that benefit to the Municipal Officers also. It was with that object that this was introduced. I think that it is a necessary amendment. It is not a serious divergence.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The difficulty is this. We have to consider that the power to start prosecution is a very important right. The Criminal Procedure Code necessitates taking of evidence before some officer to safeguard the interests of the public. A complaint could be filed without stating definitely what exactly the charge is. Therefore, it was thought better to follow the British Code.

The amendment was put and carried.

Clause 49, as amended, was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

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" In clause 50 of the Bill, in the proviso attached to the proposed sub-section (1) of section 179 of the Code, insert between the words " that " and " no " the following words;—

" save where the complaint has been made by a Court "."

Now again this amendment is proposed to bring the Cochin law into conformity with the British Indian Code and there is reason also. Under the British Code, under section 272, the Magistrates may send complaints for the preliminary investigation either of the police or other people, but that they can do so only after examining the complaints. If the Magistrate thinks that the complaint is not very serious, he can send the matter for police investigation. That can be done only after examining the complaint. But an exception was introduced in the British Act with regard to complaints made by Courts. The same difficulty arose here also. To save the difficulty an exception was made. Here also the same is introduced. I commend the amendment for the acceptance of the House.

Amendment was put and carried.

Clause 50, as amended, was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:—

" Delete from the Bill, the third modification suggested by the Select Committee in its report ".

The modification suggested by the Select Committee is:

" After clause 51 of the Bill introduce the following as clause 51-A.— '51-A. Delete section 182 of the Cochin Code of Criminal Procedure and substitute for it the following ;—

"' 182. A Magistrate may, if he sees reason to do so, dispense with the personal attendence of the accused and permit him to appear by his pleader.' ".

This is rather an important departure from the British Indian Code. I may state for the information of the House that this was one of the few sections that were retained in their original form. The British Indian Code was amended extensively in 1923 and even the subsequent amendments never deleted that clause. The matter involved in the amendment proposed by the Select Committee is this. Under the existing law — it is identical in Cochin — in cases summons were primarily issued to accused persons, the Magistrate who issues summons has a right to exempt the accused from personal

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appearance; whereas in cases where warrants were primarily issued, no such power exists. Now if the amendments suggested by the Select Committee were accepted, in all cases the Magistrate would have the power to exempt from personal appearance all accused persons. Now this being an important departure from the British Indian law, Government thought it better not to accept this amendment. For one thing, under the provisions even in cases where warrants were primarily issued if the Government thought that summons need only be issued there are provisions in the Criminal Procedure Code for every judicial officer to do so.

Mr. A. Sankara Menon *(Trippunithura).*—Where is it?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Under section 60 of our Code, corresponding to British Section 75, warrants once issued can be cancelled by the Magistrates and he can issue a summons for this purpose. I would invite the attention of the Hon'ble Deputy President to the observations contained in Ranganatha Iyer's Criminal Procedure Code at page 568 and the decisions reported in 6, Allahabad, 69 and 21, Cal. 588. I would commend the amendment, as it stands, for the acceptance of the House.

Mr. A. Sankara Menon *(Trippunithura).*—I put the question to the Government Advocate. Where is the reason for moving the Court to cancel the warrant already issued and requesting the court for the issue of summons instead? I find that there is no necessity for going against the amendment proposed by the Select Committee.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I think there is some misapprehension there. In Schedule I, attached to the Criminal Procedure Code, it is laid down that in a large number of cases, warrants have to be issued primarily. In exceptional cases summons are issued. Only in extra-ordinary cases it should be done. There should be a substantial reason to allow parties to appear by pleader or otherwise. Such cases being rare, those cases should be made the exception rather than the rule. It is only in extra-ordinary cases, cases of exceptional importance, that Magistrates issue warrants at all. There is existing in the Criminal Procedure Code, several offences where warrants have not to be issued primarily. But Magistrates were helpless and they have to issue warrants. But in most of those cases like murder, rape etc., warrants have to be issued primarily. In all those cases, the benefit of section 182 is available. If in a particular case, if a

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party feels aggrieved, in a situation like that he can go to the Magistrate and persuade him to issue a summons instead of the warrant. Government know that the Magistrate is also fettered to a certain extent by these clauses. I do not think for these reasons to make any deviation.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*— Section 182 (1) which corresponds to section 205 (1) of the British Indian Code says: "whenever a Magistrate issues a summons he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader". There is no reason for the departure made by the Select Committee in extending this privilege to both warrant and summons cases. Moreover, section 182 (2) of our Code corresponding to section 205 (2) of the British Code which the Select Committee now want to delete is this:—

"But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings direct the personal attendance of the accused and if necessary enforce such attendance in manner hereinbefore provided". Under the clause as now suggested by the Select Committee it is doubtful if a Magistrate, once he has exempted an accused, can direct his personal attendance at any further stage. The object of the amendment is to retain the old provision, which, in this respect, is on the same lines as the British Code. The provisions of the old Code have to be maintained.

Amendment was put and carried.

Clause 51, as amended, was put and carried.

Clauses 52 to 68 were put and carried.

The House rose for lunch at 1. 5. p. m. and re-assembled to 2. 15 p. m. with the Deputy President (M. R. Ry., A. Sankara Menon Avl., B. A. & B. L.,) in the Chair.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:

"In sub-clause (1) to clause 69 of the Bill substitute 'Chapter XVIII' 'for Chapter VIII'"

It is only to correct a printer's devil.

Amendment was put and carried.

Section 69 as amended was put and carried.

Sections 70 to 72 were put and carried.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move:

"In sub-section (2) of section 256-A introduced by clause 75 of the Bill insert the words 'has complied' between the words 'accused' and 'with'."

This again is a printer's mistake.

Amendments was put and carried.

Clause 73 as amended was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:

"In sub-section (1) of section 257 introduced by clause 74 of the Bill insert the word 'are' between the words 'proceedings' and 'instituted'."

This again is to correct a clerical mistake.

Amendment was put and carried.

Clause 74 as amended was put and carried.

Clauses 75 to 83 were put and carried.

Mr. Thoms Manjuran *(Government Advocate and Law Officer).*— Sir, I move the following amendment:

"Delete from the Bill the fourth modification suggested by the Select Committee in its report."

Now these clauses 84 and 85 of the Bill relate to the manner of collecting fines imposed by a court of law. Under the existing law viz., Sections 300 and 301 of the Cochin Criminal Procedure Code, whenever an offender is sentenced to pay a fine the court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender although the sentence directs that in default of payment of the fine the offender shall be imprisoned.

Such warrants may be executed within the local limits of the jurisdiction of such court and it shall authorise the distress and sale of any such property without such limits when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found. Now that relates only to moveable property. It was found in practice that that clause viz. 300 was not adequate enough and accordingly in British India an amendment was introduced. In our Bill too that amendment was incorporated. The Select Committee reported that it is not necessary to introduce the amendment and that the

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existing law was adequate. Government after careful consideration of the whole question thought that the amendment was necessary and hence the amendment I have proposed. According to the amendment power is granted for proceeding against immoveable property as well. The amended clause reads thus:

"For Section 300 of the said Code the following section shall be substituted, viz. '300. (1) Whenever an offender has been sentenced to pay a fine the court passing the sentence may take action for the recovery of the fine in either or both of the following ways; that is to say it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender.

(b) issue a warrant to the Diwan Peishkar authorising him to realise the amounts by execution according to civil process against the moveable or immoveable property or both of the defaulter.

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default no court shall issue such warrants unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The Government may make rules regulating the manner in which warrants under sub-section (1) (a) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrants.

(3) Where the courts issue a warrant to the Diwan Peishkar under sub-section (1) (b) such warrant shall be deemed to be a decree and the Diwan Peishkar to be the decree holder, within the meaning of the Code of Civil Procedure and the nearest civil court by which any decree for a like amount could be executed shall for the purposes of the said Code be deemed to be the court which passed the decree and all the provisions of that Code as to execution of decrees shall apply accordingly.

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

Hon'ble Members will see that this amendment confers upon the criminal court the power of enforcing the order to pay fines through civil courts. The order has to be sent primarly to the Diwan Peishkar. This amendment is in perfect conformity with the British Indian provision and appears to be highly necessary. In cases where either the fine is pretty large or where the moveable property is inadequate it is obvious that some machinery should be provided for collecting the fine. This only provides for such a machinery. I commend the amendment for the acceptance of the House and I hope it will

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be passed. The second clause is only ancilliary to the amendment introduced in the 1st clause and does not require any special explanation.

Mr. M. Sivarama Menon *(Ernakulam South).*—On a point of information, Sir, will these fines have priority over other debts?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I should think they will.

* **Mr. M. Sivarama Menon** *(Ernakulam South).*—Mr. Persident, Sir, I strongly oppose this amendment. On the basis of the answer given by the Hon'ble Member for Law I have to strongly oppose this amendment on the ground that it will be assisting every person to do a criminal act and get a conviction. Suppose a person takes a mortgage of Rs. 1000 today and if he wants to cheat the mortgagee of the debt, he is to go and get a conviction. In case the mortgagor is convicted and the property sold for the fine, because under this clause such fines have preference over other debts, the mortgagee stands to lose the amount advanced. On that principle I should think that this is a very dangerous clause. If Government is prepared to assure by some enactment or by a suitable amendment that such sale would be subject to the debts existing on the property on that date, then it seems to be an entirely unobjectionable amendment. If a fine is levied it must certainly and it ought to be collected. But if it will have precedence over other debts which might have been incurred for a real legitimate purpose, the persons who may have advanced money for such really needy persons can also be defeated by this amendment, unless and until they keep open their eyes and also take care that the debtor does not get himself convicted. My humble view is that this amendment will really prejudice those who have honestly advanced money to persons for bona fide purposes. For these reasons I have to oppose this amendment.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I must say, Sir, that the objection seems to be farfetched. What I really do not understand is what the delinquent stands to gain by getting into the scrape. If the money is not to be paid to the creditor it will have to be paid to the Government. A person who has mortgaged his property for Rs. 1000 to get himself fined Rs. 1000 is illusory.

Mr. A. Narayana Menon *(Vyttila).*—It may be Rs. 100.

* Speech not corrected by the Hon'ble Member.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—These are extreme cases. You can provide an objection on these lines against any measure whatsoever. Is it likely that such a case should ever turn up? We cannot legislate to exclude all possible eventualities however remote or however imaginary or fantastic they may be. I am sure this provision has been in the British Statute book for ever so many years. The Ernakulam South Member has anticipated a calamity which I have never heard of from any body. I do not think that the Member for Ernakulam South has ever heard of any agitation from any quarter to the effect that this law is a pernicious one and should be abolished. I am afraid that the matter has been rather exaggerated and it does not require any serious attention at the hands of the House.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—May I add.....

Deputy President.—I do not think there is any necessity. I want to know whether large fines are collected.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—They are.

I do not see any necessity now to make any assumptions or come to any decision regarding the priority of fines as crown debts. The section itself says, "The local Government may make rules regulating the manner in which this law is to be executed for the summary determination of any claims made by any person in respect of an attachment in execution of the debt" It is therefore open to any such person to prefer a claim and get an adjudication from a Magistrate. The omission of immoveable property even in the old British Code was merely accidental and not made deliberately to maintain any distinction between moveable and immoveable property as such. The amendment in 1923 makes moveable property as well as immoveable property equally liable to sale; that is to say, no property of the accused should be allowed to escape liability for a fine. At the same time, power is given to the local Government to make rules regarding the execution of warrants and determination of claims. The point raised by the Hon'ble Member will properly arise for consideration only when the rules are framed by Government. Standing by itself the amendment is not objectionable.

Mr. M. Sivarama Menon *(Ernakulam South).*—My only object in bringing this to the notice of the Government is to point out the hardship that would be caused in case such precaution is not made in the rules. If the rules will certainly

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provide for the investigation of such claims for the relief of such persons whose right will be prejudiced, I find absolutely no objection. I do not think myself justified in pressing this amendment. In the light of the assurance given by the Hon'ble the Leader of the House I may be allowed to think that this matter will be seriously considered by the Government. In the light of that assurance given by the Government I withdraw.

Amendment was put and carried.

Clauses 84 and 85 as amended were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:

"In clause 86 of the bill add the word 'and' as the last word in clause (a) of sub-section (1) of the proposed section 302".

This amendment is to rectify a clerical error.

Amendment was put and carried.

Clause 86 as amended was put and carried.

Clauses 87 to 92 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move.

"In clause 93 of the Bill, add the following as the proviso to the proposed section 320:—

'Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section 3 (a) of section 107".

This proviso was introduced in British India by means of an amendment after 1923. As Hon'ble Members may be aware the right of appeal in cases of security for good behaviour as well as for keeping the peace has been awarded by the amended Code. Now with regard to this extended power of appeal however in British India a provision was introduced to the effect that in cases where no security was offered and the party remained in jail and his case has been laid before the Sessions Judge or the High Court respectively, in such cases the right of appeal could not exist. It is that provision we are trying to introduce here. I shall read the provision so that the matter might be understood. Clause 93 of the Bill says:—
'For section 320 of the said Code the following section shall be substituted, viz,, '320. Any person who has been ordered under section 102 to give

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security for keeping the peace or for good behaviour may appeal against such order if made by a Magistrate to the court of Session.' The amendment introduced in British India is this. Corresponding section in the British Act provides for appeal from sentences of assistant Sessions Judge or Magistrate of the First Class. This section is based upon section 123(2) and 3(a). Section 123 (3)(a) reads thus: 'If security has been required in the course of the same proceedings from two or more persons in respect of any of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section 2 such reference shall also include the case of any other of such persons who has been ordered to give security. and the provisions of sub-sections 2 and 3 shall in that event apply to the case of such other person also except that the period if any for which he may be imprisoned shall not exceed the period for which he was ordered to give security.' To those two cases where any such party has been ordered to offer security, has not given security and is continuing in jail in such cases the right of appeal is not granted. That is the provision that is introduced in British India and that is the amendment suggested to be introduced here also. I commend it to the acceptance of the House.

Amendment was put and carried.

Clause 93 as amended was put and carried.

Clauses 94 to 111 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment.—"Introduce the following as clause 112-A of the Bill — '112-A. In section 385 of the said Code.

(a) after the figures '381' occurring between the words 'section' and 'adjudged' insert the words and figures 'or section 383.'

(b) Insert the words 'or forwarded him to a Magistrate for trial' between the words 'punishment' and 'for' occurring in line 2 of the section."

These amendments are intended to correct certain omissions.

Amendment was put and carried.

Clause 112 as amended was put and carried.

Clause 113 was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer.)*—Sir, I move "Insert the following as sub-clause (1) of clause 114 of the Bill and re-number the rest :—

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, (1) In sub-section (1) substitute the word 'hundred' for the word 'fifty' occurring in line 8 of the section." This is with regard to the slight enhancement of the maximum amount of maintenance that may be given to the aggrieved females. I am sure the whole House will sympathise with the lot of the females.

Amendment was put and carried.

Clause 114 as amended was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer.)*—Sir, I rise to move the following amendment.—"In sub-clause (1) of clause 115 of the Bill delete the full stop occurring after the figures '390' and add the following:—

'and substitute the word 'hundred' for the word 'fifty' occurring in line 7 of the sub-section."

This is only ancilliary to the amendment carried above.

Amendment was put and carried.

Clause 115 as amended was put and carried.

Clauses 116 to 125 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I move "Delete from the bill amendments 5(1) and 5(iii) suggested by the Select Committee and in amendment 5(ii) suggested by the Select Committee introduce a full stop after the word 'without' and delete the words that follow the word 'without'."

Now with regard to the amendment to 5 (ii) it is only ancilliary to other amendments. The Select Committee thought that the maximum amount for which a party applying to the Chief Court for a transfer of a case or a party who applies to the lower court to transfer a case, the maximum amount for which such party should be penalised, the Select Committee thought should be Rs. 100, unlike the amount of Rs. 200 prescribed in British India. This amendment is only intended to bring the law in Cochin in conformity with British law. Now Hon'ble Members will realise and especially those with considerable practice will easily understand the frequent dodges played by parties who want to protract cases by saying 'I want to move a transfer of the case'. That sort of intrinsic game the law wants to penalise. For that purpose the British Indian Legislature thought that a maximum penalty of Rs. 200 is not too much. I submit there is absolutely no reason in having a smaller amount as maximum here. It is only to check mala

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fide applicants who want to gain some undue advantage that this provision will come into operation at all. I submit this amendment is quite reasonable and request the House to accept it.

Amendment was put and carried.

Clause 126, as amended, was put and carried.

Clauses 127 to 130 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).* — Sir, I rise to move the following amendment:— "Add the following as clause 131-A of the Bill :—

"131-A. (a) In clause (a) of sub-section (3), of section 438 of the said Code, substitute the figures "50" for the figures "336" : and

(b) In clause (b) of sub-section (3) of the same section, substitute the figures "50" for the figures "335".

These amendments are for the purpose of correcting some mistakes.

Amendment was put and carried.

Clause 131, as amended, was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move that the sixth modification suggested by the select Committee be deleted. The matter arises thus. In the British Indian Code, a new provision was introduced under which third parties who have been victimised by thieves by getting money from them in exchange of stolen goods are assumed to have received goods bona fide. Under the existing law when a conviction is ordered the result is that the property is confiscated to the Government or ordered to be given to the true owners. The British Indian Legislature thought it unfair and that there should be a machinery under which the thieves can be ordered to compensate the parties who are victimised. This is an excellent provision of law. In these circumstances, I am sure this House will not withhold the sanction.

Amendment was put and carried.

Clause 132 as amended was put and carried.

Clauses 133 to 139 were put and carried.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move " Introduce the following as clause 140-A of the Bill :—

" 140-A. In Schedule IV of the said Code from among the additional powers with which a Magistrate of the Third Class may be invested by the Government and the District Magistrate delete item 2 viz., " Power to make orders under section 125 " and re-number the remaining powers."

This amendment follows an amendment which has already been passed.

Amendment was put and carried.

Clause 140 as amended was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, my next amendment reads " Introduce the following as sub-clause (ii) of clause 141 of the Bill and re-number the rest :—

" (ii) in Form IX insert the words "or obscene objects " after the words " or seals or coins,"

This is ancilliary to amendments already passed.

Amendment was put and carried.

Section 141 as amended was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The only remaining amendment is the one to clause 12. I have already explained the position of the Government and I do not think I have anything to add. Such a safeguard appears to be necessary. What the Inspector does is only to prosecute. It is a court-of-law which convicts. All these safeguards are enough. There is no occasion for us to make a divergence from the long-standing practice of law in British India.

Amendment to clause 12 was put and carried.

Clause 12, as amended, was put and carried.

Title and Preamble were put and carried

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I beg to move that the Bill be taken up and finally passed day after tomorrow.

Mr. T. S. Narayana Ayyar *(Secretary to Government.*—I second it.

Motion was put and carried.

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